

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS



APPEAL NO. 11F-00043

PETITIONER,

Vs.

CASE NO. 1122460341

FLORIDA DEPT OF CHILDREN AND FAMILIES

CIRCUIT: 11 Dade

UNIT: ICP

RESPONDENT.

FILED

Apr 25, 2011

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN AND FAMILIES

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on March 21, 2011, at 1:05 p.m., in Opa Locka, Florida.

APPEARANCES

For the Petitioner: [REDACTED], attorney.

For the Respondent: Javier Ley-Soto, attorney, District Legal Counsel.

STATEMENT OF ISSUE

The petitioner is appealing the Department's action to institute an Agency error Medicaid overpayment claim of \$10,984.62 against her. The Department has the burden of proof.

PRELIMINARY STATEMENT

Present as a witness for the petitioner was the petitioner's daughter, [REDACTED]

[REDACTED]. Present as a witness for the respondent was Guillermo Carton, economic

specialist from the Department's Benefit Recovery Program. A continuance was granted on behalf of the respondent and the petitioner for a hearing previously scheduled on February 3, 2011.

The hearing was left open for an additional seven days in order for the petitioner to submit additional information and for another fourteen days, for a total of twenty-one days in order for the respondent to provide a response. No information was submitted within the time frame allotted.

FINDINGS OF FACT

1. The Department notified the petitioner on December 22, 2010 of the overpayment of Medicaid benefits, agency error claim against her of \$10,984.62, for the months of September 2009 through December 2010. The respondent submitted into evidence Respondent Exhibits 1 through 13, consisting of copies from the Benefit Recovery case record to support the Department's position.

2. The petitioner resides in a nursing home. She receives Institutional Care Program Medicaid benefits (ICP) that in effect; pays for most of her stay at the nursing home. Typically, the ICP recipient is obligated to pay what is known as a patient responsibility, part of the nursing home bill. The patient responsibility payment part usually consists of Social Security payments to the recipient minus \$35. The petitioner's patient responsibility, as calculated by the Department starting September 2009 was \$1,205. What occurred in the petitioner's case was that there was a retirement payment being paid to the petitioner that was not considered in the patient

responsibility calculation/determination. The amount not calculated was \$723. The amount of the patient responsibility should have been \$1,721.23 after deductions.

3. The Department determined that based on this non-included income, an overpayment of Medicaid (ICP) benefits had occurred. The respondent indicated that this information about the non-counted retirement income could have been found by the Department, but because it was not found until late of 2010; the overpayment is considered as agency error.

4. The hearing was left open in order for the petitioner to locate some information regarding the petitioner's witness allegation that the petitioner was of Native American decent. None was provided.

CONCLUSIONS OF LAW

5. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

6. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

7. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the respondent.

8. When determining overpayment in the Cash Assistance Program (which includes the Relative Caregiver Program) and the Medicaid Program, in accordance with Fla. Admin. Code 65A-1.900, which states in relevant part:

(1)(b) overpayment: overpayment is defined as receipt of benefits in an amount greater than that for which a person is eligible.... (c) agency error: agency error occurs when incorrect benefits are received by a person due to a misinterpretation of policy, an arithmetical error, computer error, failure to take prompt action on available information or other type error over which the department has responsibility. (d) Client error: Client error occurs when a person receives benefits in amount for which the individual is not eligible due to failure to provide, report or give accurate or timely information about his or her circumstances... (2) persons responsible for repayment of overpayment... (c) Medicaid overpayments shall be recovered from the individual on whose behalf such benefits were paid, the legal guardian of such individual at the time the overpayment occurred, the parent of a minor child, or the overpaid provider.

9. Fla. Stat. ch. 414.41 sets forth the recovery of payments made due to mistake or fraud and states in part:

(1) Whenever it becomes apparent that any person or provider has received any public assistance under this chapter to which she or he is not entitled, through either simple mistake or fraud on the part of the department or on the part of the recipient or participant, the department shall take all necessary steps to recover the overpayment. Recovery may include Federal Income Tax Refund Offset Program collections activities in conjunction with Food and Consumer Service and the Internal Revenue Service to intercept income tax refunds due to clients who owe food stamp or WAGES debt to the state. The department will follow the guidelines in accordance with federal rules and regulations and consistent with the Food Stamp Program. The department may make appropriate settlements and shall establish a policy and cost-effective rules to be used in the computation and recovery of such overpayments.

...(2) The department shall determine if recovery of an overpayment as a result of department error regarding temporary cash assistance provided under the WAGES Program or benefits provided to a recipient of aid to families with dependent children would create extreme hardship. The department shall provide by rule the circumstances that constitute an extreme hardship. The department may reduce the amount of repayment if a recipient or participant demonstrates to the satisfaction of the department that repayment of the entire overpayment would result in extreme hardship, but the department may not excuse repayment. A

determination of extreme hardship is not grounds for a waiver of repayment in whole or in part.

10. As shown in the Findings of Fact, the Department instituted a \$10,984.62 agency error Medicaid (attached to the ICP Program) overpayment claim, for the months of September 2009 through December 2010 against the petitioner.

11. The petitioner's representative argued that the petitioner could be part American Indian or Native American, and thus all income should be excluded from the Medicaid Program. He also argued, or at least inferred, that there is some kind of hardship Program for the petitioner for the overpayment. Part of the petitioner's argument related to hardship, was that hardship does exist under Florida Statute for ICP type overpayment's, but after the recipient is deceased. This argument was ruled as not relevant to the case at hand.

12. The respondent indicated that the income for the petitioner must be counted in the Medicaid Program under the current eligibility status. The respondent also argued that for overpayment of Medicaid; there is no hardship policy. The respondent argued that the overpayment as an agency error against the petitioner remains correct. The hearing officer agrees with all of the respondent's arguments.

13. After considering the evidence, the Florida Administrative Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds the Department has met its burden of proof and that the Department's action to establish an overpayment of ICP Medicaid benefits, agency error claim of \$10,984.62 for the months of September 2009 through December 2010, is correct.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Department action affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Office of Legal Services, Bldg. 2, Rm. 204, 1317 Winewood Blvd., Tallahassee, FL 32399-0700. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this _____ day of _____, 2011,

in Tallahassee, Florida.

Robert Akel
Hearing Officer
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Javier Ley-Soto, Esq.